



**DEPARTMENT OF WAR  
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:	)	
	)	
	)	ISCR Case No. 25-00264
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Alison O’Connell, Esq., Department Counsel  
For Applicant: *Pro se*

03/26/2026

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**Decision**

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DRISKILL, A. M., Administrative Judge:

Applicant mitigated the security concerns under Guideline H (Drug Involvement and Substance Misuse). Eligibility for access to classified information is granted.

**Statement of the Case**

On June 11, 2025, the Department of War (DOW) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline H. Applicant responded to the SOR on August 25, 2025, and requested a decision on the written record in lieu of a hearing. The Government’s written case was submitted on December 16, 2025, which included an amendment to the SOR withdrawing allegation ¶ 1.a. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on January 14, 2026, and he did not respond. The case was assigned to me on March 16, 2026. The Government exhibits included in the FORM (Items 3-7) are admitted in evidence without objection.

## Findings of Fact

The SOR as amended alleges the following: that Applicant used cocaine in 2005 while in the U.S. Navy and holding a security clearance, misconduct for which he received an other than honorable discharge (SOR ¶ 1.b); that he used marijuana on various occasions between January 2010 and September 2024 (SOR ¶ 1.c); and that, in 2010, he was charged with possession of marijuana and possession of drug equipment, for which he received pretrial diversion (SOR ¶ 1.c). In his answer, Applicant admitted all the allegations without further explanation.

Applicant is 50 years old. He has had a cohabitant since 2011, and he has two minor children. He earned a bachelor's degree in 2015 and a master's degree in 2022. He served on active duty in the U.S. Navy from 1997 to 2003, receiving an honorable discharge, and from 2003 to 2005, receiving an other than honorable discharge due to misconduct, specifically drug abuse. He has been with his employer since March 2016. (Items 3, 6)

Applicant completed a security clearance application (SCA) in July 2024 and reported a 2010 possession of marijuana arrest. He stated the case was dismissed through pretrial diversion in 2012. He also reported using marijuana from January 2017 to June 2024, stating he used it when he was in states that have legalized recreational marijuana use. He expressed an intent to use marijuana in the future "unless it's not allowed to hold a security clearance." He reported that he was discharged from the military in 2005 for one-time drug use and that he believed he had a secret-level security clearance at the time. (Item 3)

Applicant had a background subject interview (SI) with a government investigator in November 2024. When asked about his other than honorable discharge, he explained that, in about 2005, he was on leave and was invited to a party in his hometown. He was offered cocaine, and he said yes. He snorted multiple lines of cocaine over several hours. He told the investigator that he knew he would be drug tested when he got back to work but he did not care because he was emotionally distraught over a close friend's suicide. He told the investigator this was the only time he ever used cocaine. He was immediately drug tested when he returned from leave. At the time, Applicant told his chain of command that he did not know how the cocaine got in his system, but he admitted to the investigator that he had lied to them. He was investigated by the Naval Criminal Investigative Service (NCIS) and denied knowing how cocaine got in his system but told them he could have smoked a cigar laced with cocaine at the party. (Item 5) He received nonjudicial punishment and was discharged for misconduct. He no longer associates with anyone from the party or anyone else who uses illegal drugs. (Items 4, 5)

During the SI, Applicant was also asked about his 2010 arrest for possession of marijuana and drug equipment. He stated that he was pulled over for speeding and the officer smelled the odor of marijuana in the car. A search ensued and the officer found marijuana and a pipe in the car. Applicant told the investigator he was not on drugs at the time of the arrest, but rather he was saving the marijuana for later. He was sentenced to

diversion as a first-time offender and had to perform community service, pay a fine, and attend drug counseling. He completed all the requirements, and the charges were dismissed. He explained to the investigator that, during this period, he was still dealing with the trauma of his friend's suicide and would use marijuana regularly, nearly daily. He no longer associates with anyone from this period of his life. (Items 4, 7)

When asked about his more recent marijuana use, Applicant reported his last use of marijuana was in September 2024. He did not use marijuana between 2010 and 2015. Since 2015, he used marijuana once or twice a year if he travels to a state where the use and purchase of marijuana has been legalized. He may go a year without using it at all. He disclosed that he went to a dispensary earlier that year (2024) and purchased marijuana for his personal use. He explained that his marijuana use during this more recent period (2015 to present) was because he "just wanted to." He stated if it was not for the security clearance investigation, he would continue to use marijuana where it has been legalized. He stated he would not use drugs if he was granted a security clearance "as he has too much to lose." (Item 4)

In his March 11, 2025 response to a Government interrogatory, Applicant reported his one-time use of cocaine in 2005, marijuana use two to three times a week from January to April 2010, and marijuana use from January 2015 to September 2024 when visiting States A, B, and C, and Jamaica. He reported purchasing marijuana while in those same locations "where recreational marijuana is legal."<sup>1</sup> He has not used it for medical purposes. He stated that he purchased marijuana three or four times during the 2010 usage period. He reported his last use of marijuana was September 2024, and he ended his use "in order to obtain and maintain a security clearance." He confirmed that he was aware that marijuana use remains illegal under Federal law. (Item 4)

## **DOW and Federal Government Policy on Marijuana Use**

On October 25, 2014, the Director for National Intelligence (DNI) issued a memorandum titled, "Adherence to Federal Laws Prohibiting Marijuana Use" addressing concerns raised by the decriminalization of marijuana use in several states and the District of Columbia. The memorandum states that changes to state and local laws do not alter the existing National Security Adjudicative Guidelines. "An individual's disregard for federal law pertaining to the use, sale, or manufacture of marijuana remains adjudicatively relevant in national security determinations."

On May 26, 2015, the Director of the United States Office of Personnel Management (OPM) issued a memorandum titled, "Federal Laws and Policies Prohibiting Marijuana Use." The Director of OPM acknowledged that several jurisdictions have decriminalized the use of marijuana, allowing the use of marijuana for medicinal purposes and/or for limited recreational use but states that Federal law on marijuana remains unchanged. Marijuana is categorized as a controlled substance under Schedule I of the

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<sup>1</sup> This is not an entirely accurate description of the law in Jamaica. Possession up to a certain amount has been decriminalized, and medical marijuana is legal and sold at dispensaries for those with a medical need. See *Dangerous Drugs (Amendment) Act*, 2015, Part IIIA (Jam.).

Controlled Substances Act.<sup>2</sup> Thus, knowing or intentional marijuana possession is federally illegal, even if the individual has no intent to manufacture, distribute, or dispense marijuana.

On December 21, 2021, the DNI signed the memorandum, *Security Executive Agent Clarifying Guidance Concerning Marijuana for Agencies Conducting Adjudications of Persons Proposed for Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position*. It emphasizes that federal law remains unchanged with respect to the illegal use, possession, production, and distribution of marijuana. Individuals who hold a clearance or occupy a sensitive position are prohibited by law from using controlled substances. Disregard of federal law pertaining to marijuana (including prior recreational marijuana use) remains relevant, but not determinative, to adjudications of eligibility. Agencies are required to use the “whole-person concept” stated under SEAD 4, to determine whether the applicant’s behavior raises a security concern that has not been mitigated.

### **Policies**

This case is adjudicated under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by the DOD on June 8, 2017.

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to “control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of War or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865 § 2.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and

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<sup>2</sup> On December 18, 2025, an executive order (“Increasing Medical Marijuana and Cannabidiol Research”) was signed, ordering additional research on marijuana and directing the Attorney General to “take all necessary steps to complete the rulemaking process related to rescheduling marijuana to Schedule III of the [Controlled Substances Act].” As of this writing, marijuana has yet to be rescheduled.

endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of War have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 15-01253 at 3 (App. Bd. Apr. 20, 2016).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531.

## **Analysis**

### **Guideline H, Drug Involvement and Substance Misuse**

The concern under this guideline is set out in AG ¶ 24:

The illegal use of controlled substances, to include the misuse of prescription and non-prescription drugs, and the use of other substances that cause physical or mental impairment or are used in a manner inconsistent with their intended purpose can raise questions about an individual’s reliability and trustworthiness, both because such behavior may lead to physical or psychological impairment and because it raises questions about a person’s ability or willingness to comply with laws, rules,

and regulations. *Controlled substance* means any “controlled substance” as defined in 21 U.S.C. 802. *Substance misuse* is the generic term adopted in this guideline to describe any of the behaviors listed above.

Applicant’s admissions and the evidence in the FORM establish the following disqualifying conditions under this guideline:

AG ¶ 25(a): any substance misuse (see above definition);

AG ¶ 25(c): illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia; and

AG ¶ 25(f): any illegal drug use while granted access to classified information or holding a sensitive position.

The following mitigating conditions are potentially applicable:

AG ¶ 26(a): the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment; and

AG ¶ 26(b): the individual acknowledges his or her drug involvement and substance misuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence, including, but not limited to:

- (1) disassociation from drug-using associates and contacts;
- (2) changing or avoiding the environment where drugs were used; and
- (3) providing a signed statement of intent to abstain from all drug involvement and substance misuse, acknowledging that any future involvement or misuse is grounds for revocation of national security eligibility.

AG ¶ 26(a) is established for Applicant’s cocaine use and 2010 marijuana-related arrest. He has consistently stated he only used cocaine once, and that use was over 20 years ago. Likewise, his 2010 period of marijuana use was over 15 years ago, and he has not had a drug-related arrest since that time. Given the age of these two instances and their clear-cut illegality, I find these two events to be significantly different and distinguishable from Applicant’s more recent recreational marijuana use. See ISCR Case No. 24-00914 at 4 (App. Bd. April 9, 2025). Specifically, I find that the more-recent recreational marijuana use does not “effectively renew the concern stemming from the

other drug use to find a continuing course of conduct.” *Id.* at 3. The 2005 and 2010 allegations do not cast doubt on Applicant’s current reliability, trustworthiness, and good judgment. SOR ¶¶ 1.b and 1.d are found for Applicant.

Applicant’s 2015 to 2024 recreational drug use occurred in locations where he was able to obtain and use the drug “legally” under local laws. The Appeal Board has stated, “a commonsense understanding of the evolving landscape of marijuana law and policy in the United States informs us that simple recreational marijuana use no longer holds the same severe negative implications as many other illegal drugs. This is especially, but not exclusively, true when the use occurs permissibly under state law.” ISCR Case No. 24-00914 at 3 (App. Bd. April 9, 2025). He did not hold a security clearance during this period. His use was limited to once or twice a year, and not every year. He was forthcoming in reporting his marijuana usage, and once he understood that such marijuana use was prohibited for security clearance holders, he ceased using the drug. He has not used marijuana in over a year. He does not associate with illegal drug users. Although he did not submit a signed statement of intent, he has consistently stated that he stopped using marijuana in September 2024, and he has expressed a clear understanding that failure to abstain from marijuana will negatively affect his employment. AG ¶ 26(b) applies and SOR ¶ 1.c is found for Applicant.

### **Whole-Person Concept**

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. In applying the whole-person concept, an administrative judge must evaluate an applicant’s eligibility for a security clearance by considering the totality of the applicant’s conduct and all relevant circumstances. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual’s age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation for the conduct;
- (8) the potential for pressure, coercion, exploitation, or duress; and
- (9) the likelihood of continuation or recurrence.

I have incorporated my comments under Guideline H in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). Because Applicant requested a determination on the record without a hearing, I had no opportunity to evaluate his credibility and sincerity based on demeanor. See ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003). That being said, I considered a number of important factors in my whole-person assessment that merit further discussion.

Applicant is a middle-aged father of two who has been in a committed relationship for over ten years. Several years after his 2010 arrest, he earned a bachelor's and then a master's degree. He has held the same job for ten years. Although he admittedly lied about his drug use in 2005, he was open and honest throughout this investigation regarding his prior drug use and criminal history, which indicates a higher level of maturity than he had 20 years ago. His most recent period of recreational marijuana use was limited to locations where the drug has been legalized under local law. He stopped using over a year ago and has been clear that he understands the negative ramifications of recreational marijuana use while holding a clearance.

After weighing the disqualifying and mitigating conditions under Guideline H and evaluating all the evidence in the context of the whole person, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated the drug involvement security concerns.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline H:	FOR APPLICANT
Subparagraph 1.a:	Withdrawn
Subparagraphs 1.b-1.d:	For Applicant

### **Conclusion**

I conclude that it is clearly consistent with the national security interests of the United States to grant Applicant eligibility for access to classified information. Clearance is granted.

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A. M. Driskill  
Administrative Judge